THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.26247 of 1996

Between:

B.Koteswara Rao. **.. PETITIONER**

AND

A.P.Residential Educational Institutions

Society and another. **.. RESPONDENTS**

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ORDER:

This writ petition is filed questioning the action of the respondents, in not regularizing the services of the petitioner as attender, as arbitrary and illegal. A consequential direction is sought to regularize the services of the petitioner as attender from the date, when his Junior was regularized i.e., on 01-05-1993, as per G.O.Ms.No.212, Finance & Planning, dated 22-04-1994.

The facts, to the extent necessary for this writ petition, are that the petitioner, who belongs to BC-D category, passed his S.S.C. in the year 1982 and registered his name with the Employment Exchange, Srikakulam District. He was initially appointed on daily wages, by the Principal, A.P.Residential School, Peddamadi, Srikakulam Distirct, in January 1986. The Government issued G.O.Ms.No.98, (Prog-I) Education, dated 08-04-1993, prescribing certain conditions for regularizing the services of all NMR/ daily wage employees working under the first respondent. Pursuant thereto, the second respondent issued proceedings, dated 01-05-1993, regularising the services of some of the daily wage employees working in A.P. Residential School, Peddamadi, among whom one Sri G.Kurma Naikulu, attender, who though belonged to O.C. category and was junior to the petitioner, was regularized. It is stated that the second respondent, on 01-05-1993, addressed a letter to the first respondent seeking clarification, regarding the second post of attender, in which, the petitioner was working, as to whether his services could be regularized in the said post since it was reserved for S.C. category as per the roster. While the petitioner contends that he, being senior of Sri G.Kurma Naikulu, ought to

have been regularised prior to him, the second respondent however, chose to regularize the services of Sri G.Kurma Naikulu in the open category vacancy and sought clarification from the first respondent when it came to regularising the services of the petitioner in the second vacancy reserved for the S.C. category. The first respondent issued proceedings, dated 01-05-1993, terminating the services of the petitioner. Aggrieved thereby, the petitioner filed W.P.No.10892 of 1993. This court, by order, dated 18-12-1995, allowed the said writ petition setting aside the order of termination dated 01-05-1993. Insofar as the relief of regularization is concerned, this court observed that no direction could be issued in this regard as the appropriate authorities had not taken up the matter for consideration. Pursuant to the order of this court in W.P.No.10892 of 1993, dated 18-12-1995, the second respondent issued proceedings, dated 19-03-1996, reinstating the petitioner as attender on daily wages.

The Government issued G.O.Ms.No.212, Finance and Planning (FW.PC.III) Department, dated 22-04-1994, for regularization of services of all NMRs/daily wage employees working in government/ government undertaking and other departments. Seeking regularization of his services, based on the aforesaid G.O., the petitioner approached this court and filed the present writ petition.

During the pendency of the present writ petition, this court, by order in W.P.M.P.No.32395 of 1996, dated 10-12-1996, directed the respondents to consider the case of the petitioner for regularization of his services in the post of attender in terms of G.O.Ms.No.212, dated 22-04-1994, while continuing him in service. The first respondent, by order dated 18-02-1997, held that since the said G.O. required a minimum period of five years continuous service to be put in by the employee as on 25-11-1993 and to be continuing in service as on the date of the G.O., as alone being eligible for regularization and since the petitioner had not fulfilled the said

conditions, his services could not be regularized in terms of the said G.O. The first respondent, held that the petitioner had merely been permitted to join duty on adhoc basis on 19-03-1996, pursuant to the orders of this court in W.P.No.10892 of 1993, dated 18-12-1995, and therefore, his case was rejected. By way of an amendment petition, the relief sought for in this writ petition, has been amended to include challenge to the proceedings dated 18-02-1997.

Learned counsel for the petitioner would refer to the order of this court in W.P.No.10892 of 1993, dated 18-12-1995, to contend that this court set aside the order of termination and it was not a case where the petitioner was directed to be continued in service on adhoc basis. Learned counsel would refer to the proceedings, dated 19-03-1996, wherein the petitioner, pursuant to the orders of this court dated 18-12-1995, was appointed as an attender on daily wage basis and was directed to join duty immediately. Learned counsel would contend that since the order of termination dated 01-05-1993 is set aside, the petitioner is deemed to have continued in service and since his initial appointment was in the year 1986 and he had worked continuously thereafter till the date of his termination, he had complied with both the requirements of completion of five years of service and to be working as on 25-11-1993, in terms of G.O.Ms.No.212, dated 22-04-1994.

Learned Standing Counsel for the respondents, on the other hand, would submit that the applicability of G.O.Ms.No.212, dated 22-04-1994, is only in cases where there is sanctioned post available and since the only sanctioned post of attender available in the respondent school is reserved for S.C. category and since the petitioner does not belong to S.C. category, he is not entitled for regularization in the said post.

It is no doubt true that this plea taken in the counter affidavit is not reflected in the order of the first respondent dated 18-02-1997. The contention of the learned

counsel for the petitioner that the respondents have been shifting their stand from time to time cannot be said to be without basis. Insofar as the ground of rejection, in the proceedings dated 18-02-1997, is concerned, I find force in the submission of the learned counsel for the petitioner that the order of termination dated 01-05-1993 having been set aside by this court, by order dated 18-12-1995, the petitioner is deemed to have continued in service and since his initial appointment was in the year 1986, he is deemed to be in service as on 25-11-1993 and to have completed five years of service as on that date. Since the petitioner has satisfied both the conditions, on which his case was erroneously rejected by the first respondent in his proceedings dated 18-02-1997, the proceedings of the first respondent dated 18-02-1997 is liable to be set aside. Learned counsel for the petitioner would refer to G.O.Ms.No.212, dated 22-04-1994, whereunder in condition No.3, it was specifically prescribed that the rule of reservation wherever applicable will be followed and back-log vacancies will be set-off against future vacancies. Learned counsel for the petitioner would submit that there are no attenders working on daily wages in the second respondent school belonging to S.C. category and since the petitioner is the only candidate, who is eligible to be regularized as attender in terms of G.O.Ms.No.212, dated 22-04-1994, his case should be considered for regularization and the vacancy reserved for S.C. category carried forward to be filled up as and when the next vacancy arises and, in case, there is an S.C. candidate then available to be appointed in the said vacancy.

Whether there are Scheduled caste candidates available and entitled for regularization, in terms of G.O.Ms.No.212, dated 22-04-1994, is not clear, since the counter affidavit is silent in this regard. It is for the authorities concerned to examine this matter and take appropriate decision while considering the case of the petitioner for regularization of his services in terms of G.O.Ms.No.212, dated 22-04-1994. The

impugned order of the first respondent dated 18-02-1997 is hereby set aside. There shall be a direction to the first respondent to consider the case of the petitioner for regularization of his services as attender in terms of G.O.Ms.No.212, dated 22-04-1994, within a period of ten weeks from the date of receipt of a copy of this order. Needless to state that till a decision is taken in this regard, the petitioner shall be continued in service.

The writ petition is accordingly disposed of. No order as to costs.

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RAMESH RANGANATHAN, J

Dated: 16-09-2005

Prv